IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19871 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDUL AZIZ GHULAM ALI SHEIKH & 1 - Petitioner(s)
Versus
THE DISTRICT DEPUTY DIRECTOR - Respondent(s)

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Appearance :
MR NAYAN D PAREKH for Petitioner(s) : 1 - 2.
MR KRUNAL PANDYA A.G.P. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/08/2007

ORAL JUDGMENT

1. **RULE**. Mr. Krunal Pandya learned A.G.P., waives service of rule on behalf of the respondent. At the request of the parties, the matter is taken up for final hearing today itself.

2. The petitioners have challenged the order dated 5th June, 2007 passed by the respondent refusing to issue caste certificate to the petitioners which would enable them to get the benefit of reservation meant for Socially and Economically Backward Class [“SEBC” for short]. It is the say of the petitioners that their surname is Panara and they belong to Julaya caste which is declared as SEBC. It is the say of the petitioners that their caste is known as Panara-Julaya. However, the document which was produced by them before the respondent in support of their claim shows that the caste was shown as Muslim Sheikh, which was executed by the grand father of petitioner no. 1. It also appears that the petitioners had produced school leaving certificate of the father of petitioner no. 2 i.e., petitioner no. 1, which also show the community in the caste of Islam Muslim Sheikh. In view of the same, the respondent rejected the application of the petitioners. In his opinion, only on the basis of surname Panara, no caste certificate could be issued to the effect that the petitioners belong to Julaya community.

3. I have heard Mr. N. D. Parekh learned advocate for the petitioners and Mr. Krunal Pandya learned A.G.P., for the respondent. Mr. Parekh has submitted that the

authority has not taken into consideration the material produced by the petitioners in its proper prospective. It is his submission that merely because in the school leaving certificate the caste is shown as Islam Muslim Sheikh, no inference can be drawn that the petitioners belong to that caste. It is his submission that the petitioners have been following profession of Panara i.e., cloth weaver and belong to Julaya community. This is also known as Panara-Julaya which is included in SEBC class. He has further submitted that there is other reliable material also, which may substantiate the claim of the petitioners. In his submission, in two other cases of the similar nature, the authority has granted caste certificate which can include them in the SEBC category. He has placed reliance on the decision rendered by the learned Single Judge of this Court in the case of **Imran Ali Rajabhai Polara v. State of Gujarat & Ors., reported in 2004 (1) GLR pg. 811** in support of his submission. As against that Mr. Krunal Pandya has submitted that the respondent was justified in rejecting the claim of the petitioners since the document produced by them did not give any proof regarding the fact that the petitioners belong to Panara-Julaya community/caste.

4. I have carefully considered the submissions of

the learned advocates. I have also perused the record of the petition as also the decision cited by Mr. Parekh. It appears that there are several instances where in similar circumstances, the authority has issued caste certificate holding that those persons belong to Julaya community. It also appears that the respondent while deciding the application of the petitioners has not made detailed inquiry and considered the documents carefully. In identical circumstances, the learned Single Judge of this Court has observed as under :-

> “The petitioners have relied upon several reports, research materials and documents indicating that the petitioners hail from the community of weavers and that their grandparents were engaged in the occupation of weaving such as the share certificate issued by the Kanodar Weavers Co-operative Industrial Society Ltd. in 1958 (SCA No.15578/03). The petitioners also contend that the term "Julaya" means "weaver" and that because the Muslim weavers in Kanodar village in Banaskantha District in North Gujarat only speak Gujarati language and not Urdu language and that culturally also they are similar to Hindus and, therefore, they did not use the Urdu word "Julaya" to describe their occupation or their community and that the term "Julaya" is prevalent only amongst those Muslim weavers who speak Urdu language such as Muslim weavers in Junagadh and Jamnagar Districts.
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> All the submissions made by the petitioners before the Director were required to be considered independently without being obsessed by only one fact whether the School Leaving Certificates of the petitioners' fathers mentioned their caste as Muslim Julaya or not. The Director has erred in declining to exercise the jurisdiction vested in him for

considering whether the Muslim weavers in Kanodar could be considered as Muslim Julayas or not. The Director has proceeded on the basis as if it was not open to the Director to permit any evidence to be led to show whether community "B" was synonymous to community "A" included in the list of SEBCs. As already discussed earlier, the embargo placed by the provisions of Clause (2) in Article 341 and Clause (2) in Article 342 does not apply to the list of SEBCs. Hence, the principles laid down by the Hon'ble Supreme Court in State of Maharashtra vs. Milind (Supra) would not apply to a community contending that their community is synonymous to a community included in the list of SEBCs. This is, however, not to hold that simply by showing that a community is engaged in the same occupation included in the list of SEBCs, it is entitled to be declared as a Socially and Educationally Backward Class. The Government would be required to examine the claim of a community with reference to its social and educational status before identifying or equating a community as a socially and educationally backward class. All this exercise would involve inquiry into various factual aspects and, therefore, this Court would not undertake such an exercise while hearing a petition under Article 226 of the Constitution.

16. It, therefore, appears to the Court that this is a fit case where the impugned orders passed by the Director on 25.9.2003 deserve to be quashed and set aside and the matter deserves to be remanded to respondent Nos. 1 and 2 for holding a fresh inquiry and to decide whether the petitioners belong to "Muslim Julaya" community which is already declared as a Socially and Educationally Backward Class or whether the community of Muslim weavers in Kanodar village constitute a Socially and Educationally Backward Class. For this purpose, it will be open to the respondent authorities to take into consideration the views of the Commission for Other Backward Classes constituted under Article 340 of the Constitution.

5. In view of the aforesaid, it is very clear that in what manner the respondent is supposed to hold inquiry

and ascertain the caste of the petitioners, that does not appear to have been done by him. Hence, the impugned order deserves to be quashed and set aside and it is hereby ordered to be quashed and set aside with the following direction.

5.1. The petitioners shall make fresh application to the respondent within 15 days from the date of this judgment and the respondent will give reasonable opportunity to lead such further evidence as they may desire to adduce and also the petitioners or their representative will be given adequate opportunity of personal hearing and thereafter decide whether the petitioners belong to Muslim Sheikh community. The respondent is further directed to complete the exercise on or before 31st October, 2007.

6. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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